

Message Text

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ORIGIN EB-07

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TO AMEMBASSY BONN PRIORITY

INFO AMCONSUL MUNICH

AMEMBASSY LONDON

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E.O. 11652: N/A

TAGS: EAIR, GW

SUBJECT: CIVAIR: FRG RESTRICTIONS ON TRUCKING OF AIR CARGO

REF: (A) BONN 19791, (B) BONN 19536

1. TEXT OF EMBASSY RESPONSE TO REF B FRG NOTE FOLLOWS IN
PARA 3 BELOW. DEPARTMENT AND CAB HAVE FOUND MANY
CHALLENGEABLE ARGUMENTS IN FRG NOTE, BUT BELIEVE EARLY
CONSULTATION, RATHER THAN CONTINUING WRITTEN DEBATE, NOW
OFFERS BEST OPPORTUNITY TO RESOLVE DIFFICULTIES QUICKLY.
HENCE, PARA 3 TEXT IS BRIEF. IT REITERATES US VIEW THAT
FMT ACTIONS BEAR ON US-FRG CIVAIR BILATERAL AND THAT
INTERGOVERNMENTAL CONSULTATION IS THEREFORE REQUIRED.

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2. EMBASSY SHOULD SOLICIT GERMAN PROPOSALS FOR DATES FOR CONSULTATION. EARLIEST AVAILABLE DATES FOR US SIDE WOULD BE JANUARY 12-14 IN WASHINGTON PRIOR TO STYLES' DEPARTURE FOR THREE-WEEK EAST-ASIAN NEGOTIATING TRIP. SHOULD THESE DATES BE UNACCEPTABLE, OR SHOULD GERMANS INSIST THAT CONSULTATION TAKE PLACE IN BONN, NEXT AVAILABLE DATES WOULD BE FOLLOWING FEBRUARY 16. IN DISCUSSING DATES WITH GERMANS, EMBASSY SHOULD MAKE CLEAR THAT US EXPECTS FMT TRUCKING RESTRICTIONS WILL BE DEFERRED.

3. BEGIN TEXT: THE US AUTHORITIES HAVE GIVEN CAREFUL CONSIDERATION TO THE POINTS MADE IN THE MINISTRY'S NOTE OF (DATE) AND ARE IN COMPLETE SYMPATHY WITH FRG'S DESIRE TO ELIMINATE CERTAIN ABUSIVE PRACTICES RELATED TO AIR CARGO AND TO THE SUBSTITUTION OF SURFACE TRANSPORTATION OF AIR CARGO. AS THE MINISTRY IS AWARE, MANY OF THE PRACTICES TO WHICH IT REFERS IN ITS NOTE ARE ILLEGAL IN THE US, AND US LEGISLATION AND REGULATION IN CONNECTION WITH SUCH ACTIVITIES IS RIGOROUSLY ENFORCED. THE US AUTHORITIES BELIEVE, HOWEVER, THAT IN ATTEMPTING TO RECTIFY A SITUATION WHICH THEY AND US AIRLINES DESIGNATED TO SERVE THE FRG AGREE REQUIRES RECTIFICATION, THE FEDERAL REPUBLIC HAS TAKEN ACTIONS WHICH HAVE THE EFFECT OF IMPAIRING THE OPERATING RIGHTS OF US AIRLINES PROVIDED FOR IN THE US-FRG AIR TRANSPORT AGREEMENT AND DENYING THEM A FAIR AND EQUAL OPPORTUNITY TO COMPETE FOR SIGNIFICANT TRAFFIC. THE US AUTHORITIES ARE CONFIDENT THAT IT IS NOT THE INTENTION OF THE FEDERAL REPUBLIC TO DENY US AIRLINES THEIR RIGHTS UNDER THE AGREEMENT.

THE US AUTHORITIES AGREE THAT AIR CARGO SERVICES SHOULD BE CARRIED OUT ONLY OVER ROUTES COVERED BY THE BILATERAL AIR TRANSPORT AGREEMENT. THE US AUTHORITIES CANNOT AGREE, HOWEVER, WITH THE MINISTRY'S UNILATERAL IMPLEMENTATION OF STANDARDS WITH RESPECT TO WHO MAY AND WHO MAY NOT OPERATE OVER THESE ROUTES. IT IS THE POSITION OF THE US AUTHORITIES THAT THE FEDERAL REPUBLIC HAS ADOPTED AND IS ATTEMPTING TO ENFORCE AN UNACCEPTABLE INTERPRETATION OF THE AIR TRANSPORT AGREEMENT IN THIS RESPECT. THE US AUTHORITIES ALSO AGREE THAT AIR CARGO MARKET PRACTICES LIMITED OFFICIAL USE

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WHICH LEAD TO A SYSTEM OF REBATING SHOULD BE MODIFIED TO ELIMINATE REBATING. THE US AUTHORITIES CANNOT AGREE TO THE CREATION OF A SITUATION WHERE ATTEMPTS TO MODIFY THESE PRACTICES APPLY TO THE US ALL-CARGO CARRIER LEAVING THE GERMAN AND CERTAIN OTHER COMBINATION CARRIERS TO CONTINUE AS THEY HAVE IN THE PAST. THIS IS PRECISELY THE EFFECT OF THE FEDERAL MINISTRY OF TRANSPORT'S RECENT ACTIONS.

BECAUSE THE ACTIONS TAKEN BY THE FEDERAL MINISTRY OF
TRANSPORT RAISE SERIOUS QUESTIONS CONCERNING THE
INTERPRETATION OF THE AIR TRANSPORT AGREEMENT AND HAVE
THE EFFECT OF IMPAIRING US RIGHTS UNDER THE AGREEMENT,
THE US REITERATES THAT INTERGOVERNMENTAL CONSULTATIONS
ARE REQUIRED ON AN URGENT BASIS. PENDING SUCH CONSULTA-
TIONS, THE US MUST INSIST THAT THE FEDERAL REPUBLIC
DESIST FROM IMPLEMENTING AND ENFORCING ITS RESTRICTIONS
ON THE CARGO OPERATIONS OF THE US ALL-CARGO AIRLINE. IF
THE FRG IS UNABLE TO DEFER THE FURTHER IMPLEMENTATION OF

THE RESTRICTIONS PENDING CONSULTATIONS, THE GERMAN
AUTHORITIES MUST UNDERSTAND THAT THE US WILL BE
COMPELLED TO CONSIDER APPROPRIATE COUNTER MEASURES
TO PROTECT ITS INTERESTS AND THOSE OF ITS AIRLINES. END
TEXT. KISSINGER

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